IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2215 of 2002

with

SPECIAL CIVIL APPLICATION No. 8003 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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TATANAGAR CO-OP HOUSING SOCIETY

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2215 of 2002
   MR KV SHELAT for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1
   MR PRASHANT G DESAI for Respondent No. 2
   DS AFF.NOT FILED (N) for Respondent No. 2,4-3
   NOTICE UNSERVED for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision:04/8/2004

CAV JUDGEMENT

Rule. So far as Special Civil Application No. 2215 of 2002 is concerned, Shri Nagesh Sood, learned AGP waives service of Rule on behalf of respondent No.1, learned advocate Shri PG Desai waives service of Rule on behalf of respondents No. 2 and 3, and learned advocate Ms. Kajal K. Tomar waives service of Rule on behalf of respondents No. 5 to 11.

2. What is prayed in the Special Civil Application No. 2215 of 2002 is for an appropriate writ, order or direction directing the respondents No. 2 and 3 the appropriate authorities under the Gujarat Town Planning and Urban Development Act, 1976 to implement the Town Planning Scheme No.30 insofar as it relates to Final Plot No. 151 and to take and handover physical and vacant possession of the land bearing Final Plot No. 151 to the petitioner as per the redistribution statement issued under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 [hereinafter referred to as "the Act"]. This Court by order dated 22.6.2004 directed the respondents No. 2 and 3 to implement the Town Planning Scheme which has become final by handing over possession of final plot No. 151 to the petitioner and to take possession of final plot No.152 from the petitioner and the matter was adjourned to 7th July 2004. In the meantime the persons who were in occupation of the land bearing Final Plot No. 151 which was to be allotted to the petitioner had moved Civil Application No. of 2004 before this Court for joining them as parties, as in between the respondents No. 2 and 3 served notices upon the respondents No. 5 to 11 to vacate the premises as they were in illegal occupation of the said plot in question. The said notices were served upon respondents No. 5 to 11 under Section 68 of the Act for implementation of the Town Planning Scheme which has become final. The respondents No. 5 to 11 were ordered to be impleaded as party respondents and that is how they are joined as such parties in the present Special Civil Application.

3. Special Civil Application No. 8003 of 2004 is filed by respondents No. 5 to 11 of Special Civil Application No. 2215 of 2002 for quashing and setting aside the town planning scheme No.30 of Asarwa of final plot No. 151 and for an appropriate order to direct the respondents to vary the said town planning scheme No.30. It is also further prayed in the Special Civil Application No. 8003 of 2004 to quash and set aside the notices issued by the Ahmedabad Municipal Corporation dated 25.6.2004 and for a further declaration that the

respondents have no right to evict the petitioners from the premises occupied by the petitioner.

4. Few facts are necessary for the purpose of determination of the Special Civil Applications. In the year 1961 a decision to frame a Town Planning Scheme in Asarwa area was made by the Government and accordingly the procedure for framing the town planning scheme was started as per the provisions of the Bombay Town Planning Act. On completion of all the formalities and procedures, the Town Planning Scheme No. 30 came to be processed and finalised by the State Government on 24th July 1978 and the said scheme came into force on and from 11th September 1978. On finalisation of the town planning scheme the petitioner of Special Civil Application No. 2215 of 2002 came to be allotted final plot No. 151. The petitioner Tatanagar Co.op Housing Society were the owners of original plot No.106/2 admeasuring 14500 sq.mtrs. of land. The said society is allotted final plot no. 151 admeasuring 12793 sq.mtrs. of land. Some portion of the land of the petitioners from original plot No. 106/2 has been reserved under the scheme for the purpose of school and the said reserved area has been given final plot No. 152. Inspite of the fact that the T.P. Scheme has become final as far back as in the year 1978 some portion of the land out of F.P. No. 151 which is occupied by respondents No. 5 to 11 herein and some other persons illegally is not handed over to the petitioner Tatanagar Cooperative Housing Society and even possession of F.P. No. 152 is also not taken over by the Municipal Corporation which is to be taken over from the petitioner society which forms part of O.P. No. 106/2. As the petitioner Tatanagar Cooperative Housing Society was served with the notices by the Ahmedabad Municipal Corporation to hand over possession of FP No. 152 which was forming part of OP No. 106/2 and the said notice was issued under Section 68 of the Gujarat Town Planning Act (hereinafter referred to as "the Act"). It seems that the petitioner Tatanagar Cooperative Housing Society had approached the Corporation requesting to hand over peaceful and vacant possession of F.P. No. 151 to them and to take over possession of F.P. No. 152 from them but as no steps were taken by the Ahmedabad Municipal Corporation to hand over vacant possession of FP No. 151 to the petitioner society and they insisted for taking over FP No. 152 which was forming part of OP No. 106/2 (belonging to the petitioner Tatanagar Cooperative Housing Society Ltd) and therefore the petitioner had preferred Special Civil Application No. 2215 of 2002 before this Court for prayers and reliefs which are stated hereinabove.

5. In response to the notice issued by this Court, an affidavit-in-reply has been filed on behalf of the respondent Corporation. It is submitted on behalf of the respondent Corporation that the petitioner society is required to hand over peaceful and vacant possession of FP No. 152 to the Corporation. However, in the said affidavit-in-reply there is no reference with regard to handing over of FP No. 151 to the petitioner society. In response to the order passed by this Court dated 22.6.2004 by which the respondents No. 2 & 3 were directed to implement the TP scheme which has become final by handing over possession of FP No. 151 to the petitioner society and to take possession of FP No. 151 from the petitioner. The Municipal Corporation has served notices upon respondents No. 5 to 11 under Section 68 of the Act by directing the respondents No. 5 to 11 and other persons to hand over possession of land occupied by them which is forming part of FP No. 151 which is allotted to the petitioner society. It is stated in the said notice under Section . 68 of the Act that on finalisation of the T.P. Scheme No. 30 they are in illegal occupation of the said land in question; they have no right to continue in the land in question; and they are required to vacate from the land in question. In short, the notices which are issued upon the respondents No. 5 to 11 dated 25.6.2004 are with regard to implementation of the TP Scheme No. 30 which has become final.

6. On receipt of the notice dated 25.6.2004 the respondents No. 5 to 11 immediately preferred Civil Application before this Court for joining them as party respondents and that Civil Application came to be allowed and therefore they are joined as party respondents No. 5 to 11 in the Special Civil Application. Simultaneously respondents No. 5 to 11 in Special Civil Application No. 2215/2002 also preferred Special Civil Application No. 8003 of 1004 challenging the TP Scheme No. 30 qua FP No. 151 and also the notices dated 25.6.2004. As both the Special Civil Applications are interconnected and with regard to the same land in question, both the petitions are heard together and disposed of by this common order.

7. Shri KV Shelat, learned advocate appearing on behalf of the petitioner in Special Civil Application No. 2215/2002 has vehemently submitted that the petitioner society is allotted FP No. 151 in lieu of the original plot No. 108/2. He has further submitted that FP No. 30 has become final as far back as in 1978 and still the town planning scheme is not implemented and the

petitioner society is not handed over the peaceful and vacant possession of FP No. 151. He has further submitted that the petitioner society is served with the notices under Section 68 of the T.P. Act by which the petitioner society is directed to hand over vacant and peaceful possession of FP No. 152 which is from original plot No. 108/2 which is in possession of the petitioner. He has submitted that the petitioner society is and was always ready and willing to hand over the peaceful and vacant possession of FP No. 152 (forming part of OP No. 108/2 but on the other hand the respondent Corporation was not ready and willing to hand over peaceful and vacant possession of FP No. 151. He has submitted that it is the duty of the Corporation to implement the scheme which has become final and to hand over the peaceful and vacant possession of Final Plot to the petitioner.

8. In response to the notice issued by this Court, Shri PG Desai, learned advocate appears on behalf of the respondent Corporation. He has submitted that the petitioner society is required to hand over peaceful and vacant possession of FP No. 152 to the Corporation but the petitioner society has not handed over possession of FP No. 152 to the Corporation. Therefore it is submitted that the petitioner cannot insist for implementation of TP Scheme and to insist for handing over of FP No. 151 to them. He has further submitted that subsequently pursuant to the order passed by this Court dated 22.6.2004 the occupiers who are in possession of some portion of FP No. 151 are served with the notices under Section 68 of the Act and appropriate proceedings are also initiated for implementing the T.P. Scheme and on getting possession from the occupiers more particularly respondents No. 5 to 11 the petitioner society would be handed over the possession of FP No. 151 and the Municipal Corporation will implement the TP Scheme which has become final.

9. Shri YN Oza, learned senior Advocate appearing on behalf of the private respondents No. 5 to 11 has vehemently opposed the petition. He has further submitted that they have already preferred a separate petition being Special Civil Application No. 8003 of 2004 in which they have challenged the TP Scheme No. 30 qua FP No. 151. He has submitted that before finalisation of TP Scheme No. 30 no notices have been served upon the petitioners of SCA No. 8003 of 2004 (respondents No. 5 to 11 of SCA No. 2215 of 2002) as they were affected parties being occupiers of the land in question and therefore T.P. Scheme No. 30 is bad in law and is required to be quashed and set aside as the mandatory requirement of

serving individual notices upon them is not complied with. He has further submitted that the petitioners of Special Civil Application No. 8003 of 2004 were there since 1978-79 and in support of that he has relied upon documentary evidence such as rent receipts issued by Keshavbaug Cooperative Housing Society and certain other municipal as well as electricity bills.

9.1. Opposing the prayer in Special Civil Application No. 8003/2004, Shri P.G. Desai, ld. advocate appearing on behalf of Municipal Corporation has submitted that the T.P. Scheme has become final in the year 1978 and therefore it is not open for the petitioners now to challenge the T.P. Scheme No. 30 after a period of 22 years. He has further submitted that even otherwise on merits also there is no substance at all. He has submitted that the purpose of the scheme was declared in the year 1961 but the provisions of the Act only those persons were required to be served with individual notices who were there on the date on which the intention was declared. Admittedly, in the present case even as per the very petitioners they are there since 1978-79 and therefore the petitioners were not required to be issued any individual notices. He has relied upon the Judgement of Hon'ble Supreme Court in the case of Municipal Corporation Vs. M/s. Chelaram & Sons and Another, reported in AIR 1997 S.C. Page 31, in support of his argument that only those persons who were there on the date of declaration of intention are required to be served with individual notices and were required to be heard. Under the circumstances, he has submitted that the petitioners were not required to be served the individual notices at all. He has further submitted that the Town Planning Scheme No. 30 has become final in the year 1978. Under the circumstances under the provisions of Section 67 of the Act the petitioners had no right in the land in question and the land in question is absolutely free from all encumbrances and is vested in the appropriate authority and therefore the notices dated 22.6.2004 issued upon the petitioners under Section 68 of the Act are just and proper and in accordance with law and the petitioners are required to be vacated from the land in question.

10. Shri YN Oza, learned senior Advocate has submitted that even the petitioners are entitled to alternative plot/site in consonance with the police of the Ahmedabad Municipal Corporation to give alternative site and reply to this Shri PG Desai has submitted that only those persons who were there in 1976 only are required to be given alternative space and that is the

policy of the Corporation. He has submitted that if any of the persons produces documentary evidence and Government authenticated documents to show that they were there prior to 1976 then the Municipal Corporation will consider their case for alternative space. He has submitted that there is no policy of the Corporation to give alternative site to other persons and the persons who were not there in the year 1976 and therefore he has requested to dismiss the present Special Civil Application.

11. Heard the learned advocates appearing on behalf of the parties. So far as Special Civil Application No. 2215 of 2002 is concerned, it is for implementation of the T.P. Scheme No. 30 which has become final in the year 1978. The petitioner Tatanagar Society was the owner of O.P. No. 108/2 and has allotted F.P. No. 151 and some portion of FP No. 151 is from O.P. No. 107 which is occupied by the respondents No. 5 to 11. Some portion of O.P. No. 108/2 is now forming final plot No. 152 which is reserved for the school under the town planning scheme No.30 which has become final. The petitioner society is required to be handed over peaceful and vacant possession of F.P. No. 151. Similarly, the petitioner Society is required to hand over peaceful and vacant possession of final plot No. 152 (Part of O.P. No. 108/2) to the Municipal Corporation which is reserved for school. It seems that some portion of final plot No. 151 which is handed over to the petitioner society is in illegal occupation of respondents No. 5 to 11 and some persons are served with notices under Sec. 68 of the Act on 22.6.2004. Once the town planning scheme has become final the scheme itself has become the Act and the appropriate authority is required to implement the town planning scheme having the same become final. It is the bounden duty of the appropriate authority to hand over peaceful and vacant possession of the final plot which is allotted to the concerned persons. Similarly, it is the bounden duty of the Corporation to see that peaceful and vacant possession of final plot is handed over to the concerned allottee even after removing any encroachment and/or removing those persons who are in illegal occupation and possession of the land in question. As held by the Hon'ble Supreme Court of India in the case reported in AIR 1972 Supreme Court 793, and the Judgment passed by this Court in Special Civil Application No. 982 of 1991 it is the bounden duty of the appropriate authority under the Act to implement the town planning scheme which has become final. Thus, on finalisation of the town planning scheme No. 30, it is the bounden duty of the Municipal

Corporation to hand over peaceful and vacant possession of final plot No. 151 to the petitioner society, as stated hereinabove and even as per the statement made on behalf of the petitioner society they are and they were ready and willing to hand over peaceful and vacant possession of final plot No. 152 to the Municipal Corporation. In that view of the matter, the respondents No. 2 & 3 are directed to implement the Town Planning Scheme No. 30, insofar it relates to Final Plot No. 151. The respondents No. 2 and 3 are directed to hand over peaceful and vacant possession of final plot No. 151 to the petitioner cooperative housing society and to take back peaceful and vacant possession of final plot No. 152 from the petitioner Tatanagar Cooperative Housing Society. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

12. So far as the Special Civil Application No. 8003 of 2004 filed by respondents No. 5 to 11 in Special Civil Application No. 2215 of 2002 is concerned, in the said petition, the petitioners, who are in illegal occupation of some portion of final plot No. 151 (Original-Plot No. 107), have prayed for quashing and setting aside the Town Planning Scheme No. 30 of Asarwa qua final plot No. 151. It is pertinent to note that town planning scheme No.30 of Asarwa has become in the year 1978 and the scheme itself has become the Act since 1978. The petitioners at no point of time challenged the said T.P. Scheme No. 30. The petitioners seems to be in occupation of the land since 1978-79 as the documents which are produced by the petitioners suggest that they are in occupation and possession of the land in question since 1978-79. No documentary evidence is produced to suggest that the petitioners are in occupation and possession of the land in question prior to 1978-79. Under the circumstances, the petitioners cannot be permitted to challenge the Town Planning Scheme No. 30 of Asarwa qua final plot No. 151 after a period of 22 years. Even otherwise, on finalisation of the town planning scheme, the scheme by itself has become the Act and therefore in view of the judgment of this Court [Coram: Mr. B.J. Shethna, J.], delivered in Special Civil Application No. 989 of 1991 as the scheme itself has become the Act it cannot be challenged by way of Special Civil Application.

13. Even otherwise, on merits also, there is no substance in the arguments on behalf of the petitioners. Shri YN Oza, learned Senior Advocate has contended and submitted that the Town Planning Scheme No. 30 of Asarwa is bad in law as the petitioners were not served with any

individual notices as required under Rule 26 of the Gujarat Town Planning Rules and no opportunity was given to the petitioners to submit their objections/suggestions. He has relied upon the judgment of the Hon'ble Supreme Court in support of his case that tenants and occupiers are also required to be served with individual notices. As stated hereinabove the petitioners are in occupation and possession of the original plot No. 107 (Now forming part of Final Plot No. 151) since 1978-79. There is only one document in favour of Ramjibhai Hirjibhai to show that he was in occupation and possession since 1978-79. There is no other documentary evidence on record to suggest that they are in possession prior to 1978-79. The purpose for declaration of town planning scheme was made in 1961. Admittedly, none of the persons was there in possession of the land in question. As held by the Hon'ble Supreme Court in the case of Municipal Corporation vs. M/s. Chelaram & Sons and Anr. (Supra), only those tenants and occupiers, who were there on the date on which the intention for declaration of the town planning scheme came to be published, are required to be served with individual notices. Under the circumstances, the petitioners were not required to be served with any individual notices as they were not there at the time when the declaration/intention for town planning scheme was made. Therefore, there is no substance in the arguments of learned Senior Advocate, Shri Y.N. Oza. Shri Oza has submitted that at no point of time the petitioners have submitted their objections to the town planning scheme No. 30 which has become final in the year 1978 and therefore the scheme is required to be implemented. The petitioners are served with the notices under Section 68 of the Act and directed to vacate from the land in question which is now in illegal occupation, as on finalisation of the town planning scheme the land absolutely vests in the appropriate authority and the occupiers have no right to continue in the land in question. All the rights are extinguished on finalisation of T.P. Scheme. There is no illegality committed by the Corporation in serving the notice under Section 68 of the Act on the petitioners. The notices are issued for implementation of T.P. Scheme which has become final. As stated hereinabove, even as per the judgment of Hon'ble Supreme Court of India, reported in AIR 1972 S.C. 793, it is the bounden duty of the Corporation/appropriate authority to implement the town planning scheme which has become final. Thus, issuance of notice under Section 68 which is in substance for implementation of the town planning scheme is just and proper and in accordance with law. Thus, there is no

substance in any of the arguments canvassed on behalf of the petitioners of Special Civil Application No. 8003 of 2004. Under the circumstances, the same is required to be dismissed.

14. At this stage, it is pertinent to note the submissions made by Shri PG Desai, learned advocate appearing on behalf of the Corporation in reply to the argument of Shri YN Oza that the petitioners are required to be given alternative space as per the policy of the Ahmedabad Municipal Corporation. Shri PG Desai has submitted that as per the policy and scheme of the Corporation those persons/occupiers who were there in 1976 and who are required to be removed on finalisation of Town Planning Scheme are required to be handed over possession of alternative space. He has submitted that in the present case, there is no evidence whatsoever to suggest that any of the petitioners were in occupation of the land in question in 1976 and prior to 1976. Still he has submitted that it may be open for any of the petitioners to approach the Corporation along with documentary evidence more particularly the Government authenticated documents to show that they are in occupation and possession of the land in question in 1976 and on production of the same their cases will be considered by the Corporation for allotment of alternative space.

15. For the reasons stated above, the Special Civil Application No. 2215 of 2002 is allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Special Civil Application No. 8003 of 2004 is dismissed. Rule is discharged.

rmr. [ M.R. Shah, J. ]